Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

NYNEX REPLY COMMENTS

The NYNEX Telephone Companies

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TABLE OF CONTENTS

SUMMARY

NYNEX hereby replies to parties' comments submitted May 20, 1996, with respect to interconnection issues on dialing parity, access to rights-of-way, public notice of technical changes and number administration. The Commission's Notice of Proposed Rulemaking invited comment on how to effect the interconnection provisions of the Telecommunications Act of 1996 consistent with Congress' procompetitive deregulatory national policy framework for opening local telephone markets to competition. With respect to the four subjects raised for comment, the Commission need not and should not adopt parties' proposals for additional detailed and comprehensive rules. Instead, the Commission should adopt the minimum rules needed in light of existing industry processes as well as state and federal regulatory actions already taken or underway.

Concerning dialing parity, the Commission need not mandate uniform 10-digit dialing, balloting for intraLATA presubscription, LEC provision of operator and directory assistance services for resale by a competing provider to its customers, and LEC branding of operator and directory assistance services on behalf of competing providers.

With respect to access to rights-of-way, the FCC should only adopt such rules as are necessary to provide guidance in the absence of state regulation or a resolution negotiated by the parties.

Regarding public notice of technical changes, the Commission should reject over-broad definitions as well as unreasonable advance notification requirements and restrictions on providing new services.

In regard to number administration, the record supports the Commission's reliance on its NANP Order, and the Commission should promptly move forward with effecting that Order. Finally, the Commission's Ameritech Order already provides adequate guidance to the states and industry on the implementation of new area codes.

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NYNEX REPLY COMMENTS

I. INTRODUCTION

The NYNEX Telephone Companies ("NYNEX")[1] file these Reply comments to parties' comments submitted May 20, 1996, in the above-captioned matter with respect to interconnection issues on dialing parity, access to rights-of-way, public notice of technical changes and number administration. The Commission's Notice of Proposed Rulemaking ("NPRM") invited comment on how to effect the interconnection provisions of the Telecommunications Act of 1996 (the "Act") consistent with Congress' procompetitive deregulatory national policy framework for opening local telephone markets to competition. With respect to the four subjects raised for comment, NYNEX showed in initial Comments that the Commission can largely rely on actions it has already taken, as well as state regulation and established industry processes, to achieve its goals. NYNEX responds herein to comments

[1] New York Telephone Company and New England Telephone and Telegraph Company.

proposing a different approach. Additional detailed and comprehensive rules are not needed, and should not be adopted by the Commission in this proceeding.

II. THE RECORD SUPPORTS MINIMAL ADDITIONAL FCC RULES TO EFFECT THE TELECOMMUNICATIONS ACT PROVISIONS ON DIALING PARITY, ACCESS TO RIGHTS-OF-WAY, PUBLIC NOTICE OF TECHNICAL CHANGES, AND NUMBER ADMINISTRATION

A. Dialing Parity

Several parties contend that overlay plans for numbering relief must allow uniform 10-digit dialing for calls within the home NPAs as well as between NPAs, in order to provide dialing parity.[2] These parties are mistaken. Consistent with the dialing parity obligation in § 251(b)(3), a LEC should permit telephone exchange service customers in a defined calling area within the same area code to dial the same number of digits. to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider. In this way, local telephone service providers and their customers are treated evenhandedly with respect to dialing, and dialing within an NPA may be performed more efficiently, i.e. on a 7-digit as opposed to 10-digit basis.

With respect to presubscription, NYNEX has shown that dialing parity is ensured by the Equal Access with presubscription standard for interLATA/international calls, extended to intraLATA toll calls using 2 PIC technology.[3] Some commenters maintain that the incumbent LEC ("ILEC") should be required to carry out balloting or take other extraordinary steps -- at

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[2] See, e.g., MFS 4.

[3] NYNEX 1-3.

that ILEC's expense -- to inform and educate consumers about intraLATA presubscription.[4] This position is baseless. Each carrier that offers intraLATA toll service should be responsible for marketing its product and providing related information to consumers.[5] The ILEC should only be responsible for notifying consumers about its intraLATA toll carrier selection procedures. The FCC need not adopt any rule requiring specific procedures to implement the Equal Access with presubscription dialing standards, as long as those standards are met; and it would be unfair to require ILECs to, in effect, perform free marketing/advertising services for competitors.

In regard to nondiscriminatory access to operator and directory assistance services, some commenting parties support the imposition of a duty on LECs to "resell" such services to competing providers.[6] NYNEX interprets the position of the commenting parties based on the NPRM to imply that NYNEX would be obligated to offer operator and directory assistance services for resale by a competing provider to its customers.[7] This position should not be adopted.[8] The Act requires NYNEX to provide nondiscriminatory access to its operator and directory assistance services to competing service providers.[9] Access to operator and directory assistance services are not retail services, and are therefore not subject to the resale requirements

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4 See, e.g., TRA 5.

5 Interexchange carriers strongly support this approach. See AT&T 6-7, MCI 7-8, Sprint 8-9.

6 See, e.g., MCI 8.

7 See NPRM, ¶ 216.

8 See NYNEX 5-9.

9 See §251(b)(3).

of the Act. Nor does the Act require NYNEX to create a retail service so that it may be offered for resale. To the extent that competing providers would like NYNEX to bill them for their customer's usage of operator and directory assistance services, which would then allow the competing providers to bill their own customers, and it is determined that it is technically feasible to do so, this should be the subject of negotiations with NYNEX, not regulatory mandates.

Furthermore, contrary to several parties' suggestions,[10] the Act does not require that NYNEX provide branding of operator and directory assistance services on behalf of competing providers, nor that NYNEX forego branding of its own services if branding cannot be provided to a competitor. To the extent that branding services for competing providers are determined to be technically feasible, this should be the subject of negotiations between such providers and NYNEX.

Congress went to great lengths in Section 252 of the Act to create an environment in which fair and evenhanded negotiations between carriers can take place including the timely resolution of any impasse through mediation and arbitration. Clearly it is the intention of Congress that negotiation, not regulation, be the primary means of resolving interconnection issues. The Commission should follow the clear intent of Congress by allowing such issues as resale and branding of services to be resolved through negotiation between the parties.

Also, to the extent that a CLEC or others set up their own directory assistance databases, there is no requirement in the Act, as urged by some parties,[11] that subscribers of the ILEC or the

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[10] See, e.g., AT&T 9.

[11] See, e.g., AT&T 9.

CLEC have simultaneous access to all these additional directory assistance databases in the same manner that they have access to their own provider's database.

CLECs may include their directory listings in NYNEX's white pages, yellow pages and directory assistance database for an appropriate charge, subject to state regulation. There is no requirement in the Act that NYNEX provide such services to CLECs free of charge, as asserted by Sprint (at p. 9). With respect to inclusion of other material in NYNEX's directory listings, this is properly a subject for negotiations between the parties as opposed to government mandate.

Concerning dialing delay, the Commission should only make recommendations in this proceeding. The imposition of rigid standards, as proposed by certain commenters,[12] could impede the implementation of other Commission mandates such as number portability. Some parties suggest dialing delay standards that are overly restrictive and probably not technically feasible.[13] In addition, the Commission should reject proposed definitions of the dialing delay period that go beyond the period of the call over which the LEC has control, i.e. beyond the period beginning when the subscriber completes dialing and ending when the LEC delivers the call to the carrier. Obviously, NYNEX cannot be responsible for delay that occurs on another carrier's network.

Finally, cost recovery for the implementation of intraLATA toll dialing parity should be determined in state regulatory proceedings. Contrary to several parties' recommendations,[14] the Commission should not mandate any particular cost recovery mechanism.

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[12] See, e.g., ACSI 10.

[13] See, e.g., Sprint 11.

[14] See AT&T 7, MCI 7, TRA 8.

B. Access To Rights-Of-Way

In response to comments filed in this proceeding, NYNEX reiterates the two preliminary points made in its Comments. First, Commission rules will not be controlling if a state regulates access to poles, ducts, conduits and rights-of-way pursuant to §224(c). Thus, although an "asymmetrical" set of duties may be created by §224(f),[15] a state may require reciprocity between LECs with regard to access to poles, ducts, conduits and rights-of-way. Indeed, this would be consistent with the duty to provide access to rights-of-way set forth in Subsection (4) of §251(b) of the Act, which applies to "all local exchange carriers." Second, the laws of real property may constrain the ability of LECs to provide access to poles, ducts, conduits and rights-of-way. Therefore it would not be consistent with law to adopt rules purporting to require LECs to provide access "regardless of how the legal title over such facilities is held."[16]

NYNEX has the following additional comments. AT&T suggests that, where capacity has been exhausted, a utility is required to create capacity through the deployment of different technology.[17] Limitations of capacity are a physical reality that cannot be changed by Commission rule. Moreover, in addition to space limitations inherent in poles, ducts, conduits and rights-of-way, other factors may limit capacity (e.g., a municipality may restrict pole height). In addition to the foregoing realities, AT&T's contention that utilities are required to create capacity is not supported by the Act. The Act is intended to open the networks of ILECs to

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[15] AT&T 12.

[16] ALTS 7.

[17] AT&T 17.

competition and foster the development of facilities-based competition through the building of networks by competing local exchange carriers. Consistent with this purpose, §251(b)(4) imposes the duty to provide access, not to create matter. In fact, §224 explicitly recognizes insufficient capacity as a reason to deny access.[18]

As a related matter, the Commission rules must provide to utilities the ability to reserve capacity for future use. This is critically important to ensure that universal service goals and provider of last resort obligations are met. A planning period of one year for the reservation of capacity is not realistic to meet these objectives; the appropriate planning cycle is actually three to five years.

Fears that utilities will use safety, reliability and engineering considerations as a ruse to wrongfully deny access are unwarranted. NYNEX agrees that existing standards, such as the National Electric Safety Code, provide appropriate, objective guidelines to be applied in making these determinations.

The Act is not a stand-alone document. It is part of an existing statutory scheme, including §224 provisions which give cable providers access to poles, ducts, conduits and rights-of-way owned or controlled by utilities. These rights to access have now been extended to telecommunications service providers by the Act. However, the Act did not redefine or expand

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[18] See Section 224(f)(2).

the terms of Section 224 to apply to "pathways" of whatever sort (e.g., cabinets, telephone rooms, etc.), as asserted by several commenters.[19]

Rules relating to the sharing of costs of modification or alteration under §224(h) should be deferred to the rulemaking concerning charges for attachments, which is contemplated by §224(e)(1). Pending the adoption of rules in that proceeding, an interim rule should provide that proportionate shares of costs of modification or alteration should be borne equally by the utility and other attaching entities. That is, the share attributable to each of these entities should be equal to the total cost of modification or alteration divided by the number of entities. The inclusion of the potential revenue effect of a modification or alteration as a part of an apportionment formula is completely speculative, as the revenues may never materialize. It would be nothing more than a subsidy by the utilities of the other attaching entities, for which there is no authority in the Act.

Issues associated with rates and imputation can be handled more thoroughly and efficiently in proceedings designed for those purposes, as intended by the NPRM.[20] Section 224(e) -- which is not a subject of the NPRM in this proceeding -- provides for a rulemaking regarding charges to telecommunications carriers for pole attachments, in the event the parties are unable to agree. In the interim, rates must comply with Section 224(d). Likewise, the

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[19] E.g., MCI 23, MFS 9.

[20] See NPRM, ¶ 221.

Commission should not permit parties to inject Section 224(g) imputation issues into this proceeding.

Finally, in this rulemaking, the Commission should be mindful of the fact that access to rights-of-way is one of the items included in §251, and the Commission should give appropriate deference to the role of negotiations between the parties. Negotiation is likewise contemplated by §224, and the Commission should adopt only such rules as are necessary to provide guidance in the absence of state regulation or a resolution negotiated by the parties.

C. Public Notice Of Technical Changes

Consistent with the Commission's long-standing "All Carrier Rule," NYNEX supports public notice of technical changes by all carriers when such changes directly impact interconnection and interoperability of networks.[21] NYNEX opposes certain parties' proposed requirements for public notice of virtually any changes involving the network,[22] or requirements that would make NYNEX responsible for evaluating the impact that changes will have on another carrier's network.[23] Such proposals are over-broad and unnecessary to ensure network interconnection/interoperability, and there is no basis for changing the traditional responsibility of each carrier to maintain its own network and respond to technological and market changes.[24]

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[21] NYNEX 15-16.

[22] See, e.g., ALTS 3.

[23] See MCI 15, ALTS 2.

[24] While NYNEX can make an assessment of the likely impact of a technical change at the interface with a competitor's network, NYNEX would need detailed knowledge of a competitor's network architecture to forecast how a change might impact that competitor's network performance.

NYNEX supports providing public notice of technical changes through industry forums and publications, but does not support filing such notices with the Commission (aside from normal tariff requirements). The Commission's network information disclosure requirements have been in place for over a decade. The record supports the fact that the necessary information has been available to the public/industry and that the process works. Aside from some minor modifications, such as time frames associated with specific changes, which the Commission should defer to industry bodies, no additional requirements are necessary. Claims by such parties as MCI (pp. 17-20) that additional filings with the Commission are necessary, should be rejected as unsupported and unwarranted attempts to impose more burdensome requirements. The Commission should address this area by affirming the requirement that all carriers are subject to network information disclosure, and by requiring carriers to address the details in the appropriate standard bodies. Only by making all carriers responsible can the Commission assure that competitively neutral processes are put in place. The notices will be available for FCC review if the need arises, and unnecessary regulatory filing requirements should be avoided.

Finally, NYNEX opposes unreasonable advance notification requirements, e.g. 18 months in advance of deployment,[25] or restrictions on providing new services that are facilitated by technical changes.[26] Such proposals are impractical, would hamstring technological progress and deny customer benefits. In addition, the Act (§ 251(c)(2)) allows carriers to request interconnection at any technically feasible point in the network. If these "new" points of

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[25] See MFS 15.

[26] See MCI 20.

interconnection must be disclosed under such rigid rules, carriers may find themselves having to wait 6 months or more to finalize their interconnection. Instead of adopting rigid regulatory mandates, the FCC should defer to established industry standards bodies and processes to address the notification and publication of technical changes.

D. Number Administration

NYNEX has shown that the Act's requirements on number administration are already satisfied by the Commission's NANP Order.[27] The record clearly supports NYNEX's position.[28] Various commenters urge the Commission to act swiftly to implement the NANP Order.[29] In this regard, NYNEX agrees that the Commission should make implementation of the NANP Order a priority. Specifically the Commission should expeditiously establish the North American Numbering Council ("NANC") so that the numbering administration transfer process can move forward without further delay.

NYNEX agrees that the Ameritech Order[30] should continue to provide guidance to the states regarding how new area codes can be lawfully implemented. Contrary to certain parties' arguments,[31] there is no basis for enlarging the scope of the Ameritech Order by, for example, specifically excluding overlay plans, or imposing restrictive conditions on overlay plans, such as

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[27] Administration Of The North American Numbering Plan, CC Docket No. 92-237, FCC 95-283, Report and Order released July 13, 1995. See NYNEX 17-19.

[28] See, e.g., AT&T 11.

[29] See, e.g., Omnipoint 6.

[30] Proposed 708 Relief Plan And 630 Numbering Plan Area Code By Ameritech-Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995).

[31] See MCI 12, TCG 7.

uniform 10-digit dialing and permanent number portability requirements. As described in the NPRM (¶¶ 254-57), the Ameritech Order has set forth general standards to ensure that area code relief plans, such as overlays, comport with FCC numbering policy and are not unreasonably discriminatory. Specific issues on proposed area code relief plans, including overlays, are properly addressed in the first instance by state commissions. Under this approach the FCC can intervene if the need arises, and need not take any additional action at this time.

NYNEX agrees that Bellcore, the LECs, and the states should continue to perform their respective functions until number administration is transferred to the new NANP Administrator. The FCC should reject arguments that some interim arrangement should be implemented so that the LECs no longer have responsibility for NXX code administration.[32] Plainly, implementing such interim arrangements would be inefficient in view of the impending transfer of such responsibilities to the new NANP Administrator not aligned with any particular industry segment. The LECs currently assign NXXs pursuant to nondiscriminatory guidelines determined by the industry under FCC oversight. If particular problems arise, they can be appropriately dealt with through negotiation or the regulatory process. There is simply no basis for an additional, disruptive transfer of responsibility which would be very short-lived in any event.

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[32] See Cal. PUC. 8, MFS 9.

III. CONCLUSION

To effect the Act's interconnection provisions on dialing parity, access to rights-of-way, public notice of technical changes and number administration. the Commission need not and should not adopt parties' proposals for additional detailed and comprehensive rules. Instead, the Commission should adopt the minimum rules needed in light of existing industry processes as well as state and federal regulatory actions already taken or underway.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Yvonne Kuchler, hereby certify that copies of the foregoing REPLY COMMENTS were served on the parties listed on the attached service list, this 3rd day of June, 1996, by first class United States mail, postage prepaid.

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